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Ariba/ePlus Settlement Could Spark More Patent Lawsuits

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A \$37 million patent infringement settlement between Ariba and ePlus may lead to many more such legal challenges. Investigate the risk of challenges to your products and whether others have infringed on your patents.

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NEWS ANALYSIS

Event

On 14 February 2005, Ariba and ePlus settled a patent infringement lawsuit involving electronic procurement systems that search, check inventories and perform other functions. Ariba agreed to pay ePlus \$37 million during 1Q05 to settle the case. The companies also have agreed to cross-license their patent portfolios.

ePlus, a software and services company, bought two patents from Fisher Scientific and developed a third in-house. In a lawsuit filed in May 2004 in U.S. District Court in Virginia, ePlus alleged that Ariba had infringed on the three patents. ePlus originally sought up to \$98 million in damages and an injunction against future infringement. On 7 February 2005, a jury found that Ariba had willfully infringed on ePlus' patents. A hearing on damages was pending when the companies announced the settlement.

Analysis

This settlement may mark the first salvo in a war involving hundreds of companies that filed or bought software patents during the boom of the 1990s, because:

- During the rush to market, few software developers were able to find out whether their products' features and functions were already patented.
- At many companies, management has changed several times since the 1990s boom, and other companies have been bought out, further obscuring knowledge of whether products were vetted for patent infringement.
- Some bankrupt companies were bought by ventures set up solely to exploit the patents.

This settlement is good news for a few vendors that hold defensible patents for features that many software developers think are public-domain algorithms. The settlement may, however, harm many independent software vendors (ISVs), which face high legal costs to investigate patents and product delays if patent troubles arise. Customers will benefit from patented innovations, but software will inevitably cost more.

Ariba must pay more than 10 percent of its 2004 revenue to settle this dispute. However, Gartner does not anticipate more than a marginal impact on Ariba's 2005 development plans or execution.

Recommendations for ISVs:

- Ensure that your own innovations are properly patented.
- Undertake an extensive review of your software's functions against patents known to be in dispute.
- Set up a contingency fund to handle legal costs in case you are sued.

Recommendations for software buyers:

- Beware of ISV contracts that pass on joint liability for patent disputes.
- Prepare for software vendors to delay releasing new functions until they have checked for patent infringements.

Analytical Source: Andy Kyte, Gartner Research

Recommended Reading and Related Research

- "Innovation, Intellectual Property and the Internet" — Enterprises should take note of profound changes in the intellectual property landscape in the United States. **By Colleen Young**
- "Protect Yourself on the RFID Intellectual Property Front" — Learn about the complex intellectual property issues around radio frequency identification (RFID) hardware and implement policies to protect yourself from unexpected costs. **By Jeff Woods and Jane Disbrow**

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